

CONTRACT #7
RFS # 331.03-011

Department of Education

VENDOR:
University of Memphis
Center for Research in
Education Policy (CREP)



RECEIVED

NOV 06 2007

PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

FISCAL REVIEW
LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: James White, Executive Director, Fiscal Review Committee
FROM: Lana C. Seivers, Commissioner *Lana C Seivers/gke*
DATE: November 5, 2007
RE: Request to appear before Fiscal Review Committee regarding Non-Competitive Contract RFS # 331.03-011-08

Please consider the enclosed information regarding a request for Non-Competitive Contract with University of Memphis, Center for Research in Education Policy (CREP).

The proposed contract will allow the following:

- A survey of student participation at the district and state level in No Child Left Behind (NCLB) programs including Titles I (education of economically disadvantaged), IIA (teacher quality), IID (education technology), V (innovative programs), VI (rural, low income schools), X (homeless education), and private school participation in NCLB.
- A survey of all Tennessee teachers on professional development needs and activities related to high quality professional development as required under Title IA and IIA as a component of district accountability at the school, district, and state levels.
- A survey of all Tennessee schools on the status of integration of educational technology in the instructional process required as a reporting requirement under Title IID.

The proposed contract is needed for the following:

- For NCLB grants that are awarded to the State based on a formula (Titles I, IIA, IID, V, VI, and X), EDGAR Section 75.720 (Financial and Performance Reports) requires the Department to submit performance reports to the Secretary of Education as required by the U.S. Department of Education. This contract collects data from districts across the State to meet this requirement.
- The Elementary and Secondary Education Act (ESEA) as amended by the NCLB Act of 2001, Section 1116(e)(4) requires that the State evaluate supplemental education service providers. The Supplemental Education Service evaluation in this contract assists the state in meeting that requirement.
- T.C.A. 49-13-128 necessitates that the office of education accountability generate a summative report on the state of Tennessee charter schools and national charter school findings prior to February 2008. The charter school report submitted in the first year of this contract assists the State in meeting this requirement.

The request for Non-Competitive Contract was submitted late and incorrectly for the following:

- Former Director of Contracts misunderstood the policy and procedures.
- The request was submitted to the Office of Contract Review (OCR) by the former Director of Contracts. He was waiting for a response from OCR before submitting to the Fiscal Review Committee.

The new Director of Contracts has been informed of the correct procedures for this process and will submit all requests for review accordingly in the future.

Thank you for your consideration.

CC: Dr. Timothy Webb, Deputy Commissioner
Mr. Robert Greene, Assistant Commissioner

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	331-03-011-08	
2) State Agency Name :	Department of Education	
3) Service Caption :	Data collection, analysis and evaluation services for Federal Programs Title I, II, V, VI and X	
4) Proposed Contractor :	University of Memphis, Center for Research in Education Policy (CREP)	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	December 1, 2007	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	November 30, 2012	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,500,000	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
<p>There are two main services that the State will acquire from this contract: data collection and program evaluation. The state will not acquire the software or host the web-based applications.</p> <p>Data Collection</p> <p>The data collection includes:</p> <ol style="list-style-type: none"> 1. Student participation at the district and state level in NCLB programs including Titles I (education of economically disadvantaged), IIA (teacher quality), IID (education technology), V (innovative programs), VI (rural, low income schools), X (homeless education), and private school participation in NCLB. 2. Survey of all Tennessee teachers on professional development needs and activities related to high quality professional development as required under Title IA and IIA as a component of district accountability at the school, district, and state levels; and, 3. Survey of all Tennessee schools on the status of integration of educational technology in the instructional process required as a reporting requirement under Title IID. <p>The tasks that support the data collection scope include:</p> <ol style="list-style-type: none"> 1. Development and implementation of a web-based data entry form; 		

2. Maintenance of a help desk to provide data-entry support for local educators;
3. Follow up with delinquent school districts that have not submitted required data; and,
4. Provision of summary reports at the school, district, and state levels.

These data collection tasks support the federal reporting requirements of No Child Left Behind Act under Titles I, II, V, VI, and X.

Analysis and Evaluation Studies

The tasks that support the evaluation studies include:

1. Literature review of similar existing education programs such as charter school research, supplemental education research, and alternative teacher licensing research;
2. The design of a research-based evaluation study to measure the effectiveness of the designated educational program;
3. The implementation of the research design which includes components such as:
 - a. Analysis of the Tennessee Value-Added Data in partnership with Dr. Bill Sanders of SAS;
 - b. Classroom observations of teachers to measure program implementation;
 - c. Surveys of educators, parents, and service providers; and,
 - d. Interviews of key stakeholders;
4. The production of a final report which evaluates the designated program.

The final statewide reports that are produced include the studies for charter schools, for supplemental educational services, and for alternative teacher licensing programs (Transition to Teach federal grant). The charter school study also provides individual charter school reports for each charter school.

10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :

There are multiple reasons that the Department is procuring these services.

1. For NCLB grants that are awarded to the State based on a formula (Titles I, IIA, IID, V, VI and X), EDGAR Section 75.720 requires the Department to submit performance reports to the Secretary of Education as required by the U.S. Department of Education. This contract collects data from districts across the State to submit to the U.S. Department of Education to meet this requirement;
2. The Elementary and Secondary Education Act (ESEA) as amended by the No Child Left Behind Act of 2001, Section 1116 (e)(4) requires that the State evaluate supplemental education service providers. The Supplemental Education Service evaluation in this contract assists the State in meeting that requirement.
3. T.C.A. 49-13-128 necessitates that the office of education accountability generate a summative report on the state of Tennessee charter schools and national charter school findings prior to February 2008. The charter report submitted in the first year of this contract assists the State in meeting this requirement.
4. For NCLB grants that are awarded to the State based on a competition in which the State submitted an application (Transition to Teacher and Charter School Grant), EDGAR Section 75.720 requires the Department to submit performance reports to the Secretary of Education as required by the U.S. Department of Education. In addition, as a component of the approved application, the State addressed how it would evaluate the outcomes of these projects. This contract collects data for submission to the U.S. Department of Education to meet EDGAR reporting requirements and evaluates both projects committed to in its approved applications.

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

As previously recommended, this service has been purchased in the past from the University of Memphis through a grant contract for approximately five years. As currently requested, the SDE will be originating the contract as a "Fee for Service."

12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)

Center for Research in Education Policy (CREP), at the University of Memphis

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

CREP was established by the State as a Center of Excellence for educational policy. It is staffed with professionals who specialize in educational research and policy, especially as it relates to the state of Tennessee. Because of this expertise, CREP has partnered with the Tennessee Department of Education to provide research on important education initiatives in the state including Reading First, education technology integration, comprehensive school reform, supplemental educational services, alternative licensing programs, and charter schools. The proposed contract contains services that CREP has been performing excellently for the Department for approximately five years.

CREP's director, Dr. Steven Ross, is a highly respected national scholar of education and is widely published. He has worked in cooperation with Dr. Bill Sanders, Senior Manager of Value-Added Assessment and Research at SAS Institute, Inc., who is also a nationally recognized scholar of education, in providing relevant analysis in the area of Tennessee's value-added assessment system of student achievement. Because of the outstanding work that CREP has done in Tennessee on many of these initiatives, other states have contracted with CREP to provide similar services. In addition, the United States Department of Education has invited Dr. Ross to speak at national conferences on the evaluation of supplemental educational services. Because of CREP's many years of experience with the State in evaluating educational programs and the recognition at the national level of CREP's expertise in these areas, it is the best vendor to provide the proposed services to the Department.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

No other agency was solicited due to the fact that CREP has performed similar data collection and evaluation studies for approximately the past five years through a grant instead of a contract. The State has incurred the cost of the development of necessary on-line tools and processes through previous grant contracts and thus is only a continuation of services.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

There are several reasons that justify the State's position in requesting a non-competitive contract with CREP instead of using a competitive process to procure these services.

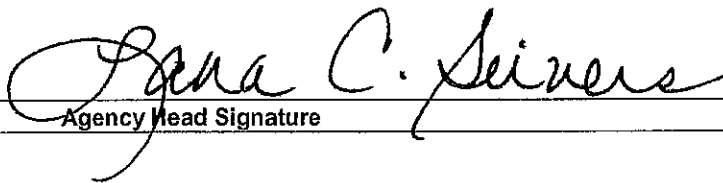
1. First, as CREP has performed these services for the Department for many years, it has the historical data and background knowledge that other vendors would lack. For another vendor to perform similar tasks, the vendor would need additional and significant resources to develop software applications to collect and analyze the comprehensive levels of data. CREP has already collected prior year data and has at its disposal.
2. The charter school study that is commissioned by the Office of Research and Educational Accountability, Comptroller of the Treasury, as mandated in T.C.A. 49-13-128, will expand the continuing study that the State has already initiated with CREP. This will allow for a more comprehensive and robust analysis of charter schools.
3. A new vendor would not be able to retroactively collect faculty, administration, students and parent data that are necessary components in the Tennessee charter school legislation as outlined in T.C.A. 49-13-102, "options for parents... provide greater decision making authority to schools and teachers...create new professional opportunities...afford parents substantial meaningful opportunities to participate." The same challenge would exist for a new vendor for the other areas of research covered by this proposed contract such as supplemental educational services and alternative licensing programs.
4. Two of the studies contained in the proposed contract require the sharing of data and analysis between CREP and Dr. Bill

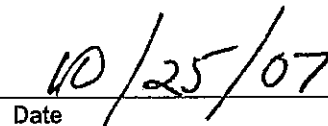
Sanders so that the Tennessee Value-Added System information can be incorporated. CREP and Dr. Sanders have negotiated an agreement for this data and analysis that a new vendor would need to negotiate in a similar agreement with Dr. Sanders.

5. The cost of the initial development to establish the framework to provide the services has already been incurred by the State. For example, in its previous grant with CREP to provide similar services, the State has already covered the cost of the development of the on-line professional development survey for teachers and the on-line reporting tool to collect school district information. If the State were to contract with another vendor, the cost to cover developmental expenses would need to be included.
6. CREP has the necessary historical experience, human resource skills and previous dataset necessary to obtain the highest scholarly analysis at a cost that has an economy of scale that reflects the most efficient usage of taxpayer funds. For the past three years, CREP has provided the State with reliable and exemplary data analysis in the areas that are included in the proposed scope.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the procuring agency head or authorized signatory)


Agency Head Signature


Date

070407

C O N T R A C T S U M M A R Y S H E E T
S U P P L E M E N T A L S C H E D U L E

Contract Number							
Fiscal Year	2008						
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
331.03	469	130	25	CQ6	ACX	84.196A	\$10,000.00
331.03	457	130	25	CG6	ACX	84.350B	\$19,000.00
331.03	479	130	25	CE6	AAX	84.318A	\$31,500.00
331.03	431	130	25	CA6	ACX	84.298A	\$50,697.00
331.03	431	130	25	CA6	ACX	84.298A	\$38,250.00
331.03	470	130	25	CB6	ACX	84.010A	\$98,000.00
331.03	470	130	25	CB6	AAX	84.010A	\$61,000.00
331.03	470	130	25	CB6	AAX	84.010A	\$10,000.00
Fiscal Year	2009						
331.03	470	130	25	CB7	AAX	84.010A	\$56,650.00
331.03	470	130	25	CB7	AAX	84.010A	\$10,300.00
331.03	469	130	25	CQ7	ACX	84.196A	\$10,300.00
331.03	457	130	25	CG7	ACX	84.350B	\$19,570.00
331.03	431	130	25	CA7	ACX	82.298A	\$52,217.00
331.03	479	130	25	CE7	AAX	84.318A	\$32,445.00
331.03	470	130	25	CB7	ACX	84.010A	\$100,940.00
Fiscal Year	2010						
331.03	470	130	25	CB7	AAX	84.010A	\$10,609.00
331.03	469	130	25	CQ7	ACX	84.196A	\$10,609.00
331.03	457	130	25	CG7	ACX	84.350B	\$20,157.00
331.03	479	130	25	CE7	AAX	84.318A	\$33,418.00

331.03	431	130	25	CA7	ACX	84.298A	\$53,784.00
331.03	470	130	25	CB7	ACX	84.010A	\$103,968.00
331.03	470	130	25	CB7	AAX	84.010A	\$58,350.00
Fiscal Year	2011						
331.03	470	130	25	CB8	AAX	84.010A	\$60,101.00
331.03	470	130	25	CB8	AAX	84.010A	\$10,927.00
331.03	469	130	25	CQ8	ACX	84.196A	\$10,927.00
331.03	457	130	25	CG8	ACX	84.350B	\$20,762.00
331.03	479	130	25	CE8	AAX	84.318A	\$34,421.00
331.03	431	130	25	CA8	ACX	84.298A	\$55,398.00
331.03	470	130	25	CB8	ACX	84.010A	\$107,087.00
Fiscal Year	2012						
331.03	470	130	25	CB8	AAX	84.010A	\$61,904.00
331.03	470	130	25	CB8	AAX	84.010A	\$11,255.00
331.03	469	130	25	CQ8	ACX	84.196A	\$11,255.00
331.03	457	130	25	CG8	ACX	84.350B	\$21,385.00
331.03	470	130	25	CE8	AAX	84.318A	\$35,454.00
331.03	431	130	25	CA8	ACX	84.298A	\$57,060.00
331.03	470	130	25	CB8	ACX	84.010A	\$110,300.00
TOTAL							\$1,500,000.00

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
UNIVERSITY OF MEMPHIS**

This Contract, by and between the State of Tennessee, DEPARTMENT OF EDUCATION, hereinafter referred to as the "State" and UNIVERSITY OF MEMPHIS, hereinafter referred to as the "Contractor," is for the provision of evaluation activities relative to the No Child Left Behind Act of 2001, as further defined in the "SCOPE OF SERVICES."

Contractor Federal Employer Identification Number: C620648618-00

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The following definitions apply to terms used in the Scope of Services for this contract.
- a. Education Data Exchange Network (EDEN) – U.S. Department of Education centralized coordinated repository of state K-12, education and performance data. It includes an electronic data submission and survey tools.
 - b. Consolidated State Performance Report (CSPR) - the required annual reporting tool for each State, the District of Columbia, and Puerto Rico as authorized under Section 9303 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).
 - c. NCLB - No Child Left Behind Act of 2001 is a federal act to close the achievement gap with accountability, flexibility, and choice.
 - d. Local Education Agency (LEA) – Local school districts.
 - e. Fellow – First year teacher who has been successfully admitted into a specific program.
 - f. Mentor – An experienced teacher who supports a beginning teacher.
- A.3. The Contractor will be responsible for hosting all data collection and reporting systems. These data collection and reporting systems will not reside on State servers and will never become the intellectual property of the state.
- A.4. The Contractor will continue implementing the electronic data collection and reporting system which produces data for the creation of EDEN files, the CSPR, the Professional Development Survey, the Paraprofessional Data Collection, and the Administrator's Page for NCLB Data Collection Modules to meet the reporting requirement of the U.S. Department of Education.
- a. Data collection for in NCLB programs including:
 - i. Title I (education of economically disadvantaged and Public School Choice/Supplemental Educational Services)
 - ii. Title IIA (teacher quality),
 - iii. Title IID (education technology)
 - iv. Title V (innovative programs)
 - v. Title VI (rural, low income schools)
 - vi. Title X (homeless education)
 - vii. Private school participation in NCLB.
 - b. Date of submission field.
 - c. Response rate calculator for Professional Development Survey using the number of teachers at each school provided by the State.

- d. District and school names for the Administrator's Page for NCLB Data Collection Modules.
- e. A field for the LEA to describe how the Rural and Low Income School program funds helped the district increase student academic achievement. Provide quantitative data where available.
- f. A field for the LEA to describe how the Rural and Low Income School program funds helped the district decrease the dropout rate. Provide quantitative data where available.

Performance Measures (A.4.): Reports will be provided to the State, upon request, in a web-based or Excel format at the school, district, and state aggregated levels.

- A.5. The Contractor will implement the comprehensive online data collection system for producing the Private School Count/Report. In addition to the specifications noted, as appropriate, in A.4. the following components will be added to the system:
 - a. A box to enter the number of students in Title I, Part A.
 - b. Date of submission.

Performance Measures (A.5.): Reports will be provided to the State, upon request, in a web-based or Excel format at the district, and state aggregated levels.

- A.6. The Contractor will develop and implement a comprehensive online data collection system for the Homeless Education Program. In addition to the specifications noted, as appropriate, in A.4. the following components will be added to the system:
 - a. Homeless Data count for districts with subgrants.
 - b. Homeless Data Count for districts without subgrants.

Performance Measures (A.6.): Reports will be provided to the State, upon request, in a web-based or Excel format at the district, and state aggregated levels. The reports will show results for districts with and without McKinney-Vento sub grants.

- A.7. The Contractor will provide a data collection tool for the Transition to Teach program. In addition to the specifications noted, as appropriate, in A.4., the following components will be added to the system:
 - a. Change all references from "Teach Tennessee" to "Transition to Teach."
 - b. Online-course Questionnaire administered to the first year Fellows.
 - c. End of year "Participant" Questionnaire administered to first and second year Fellows.
 - d. Focus group with randomly selected Fellows.
 - e. Focus group (or questionnaire) with the Mentors.
 - f. Principal Questionnaire.
 - g. Performance data (e.g., number of participants, retention rate, etc.).

Performance Measures (A.7.): An evaluation report will be prepared from data collected.

- A.8. The Contractor will develop a web-based data collection and reporting system for the educational technology reports and requirements. In addition to the specifications noted, as appropriate, in A.4. the following components will be added to the system:
 - a. Survey of all Tennessee schools on the status of integration of educational technology in the instructional process required as a reporting requirement under Title IID.

Performance Measures (A.8.): Survey results will be provided to participants.

- A.9. The Contractor will develop and implement an evaluation system to provide school-level and aggregate evaluation information for the Tennessee Charter Schools program. The evaluation methodology will employ multiple quantitative and qualitative data sources including questionnaires, interviews, classroom observations, and student achievement assessments.
- a. Assess data for the Tennessee charter school program.
 - b. Provide formative evaluation data by school.
 - c. Student-level analysis of achievement outcomes for Tennessee charter schools.
 - d. Assistance to the State in identifying and disseminating effective practices identified in the State's charter schools.
 - e. Technical assistance regarding charter school evaluation.

Performance Measures (A.9.): Annual evaluation report and/or students-level analysis of achievement outcomes for charter schools and some formative evaluation reports to participating charter schools.

- A.10. The Contractor will augment its existing surveys and methodology to measure charter school student achievement, parental involvement, teaching methods, pupil and faculty performance, and faculty professional opportunities for data collection and analyses necessary to fulfill Office of Research and Education Accountability's (OREA), Office of the Comptroller, reporting requirements under Acts 2005, Public Chapter 414.
- a. Review selected charter schools' authorizers, principals, and /or board members, providing data and consulting with OREA in an interpretation of the findings.
 - b. Examine and collaborate with OREA's interpretation of achievement in charter schools in OREA's conducted literature review of studies of charter school programs in other states.

Performance Measures (A.10.): Site-based and overall reports on findings and implications.

- A.11. The Contractor will develop and implement an evaluation plan to examine the provision of Supplemental Educational Services (SES) in Tennessee, as well as the effectiveness of each provider in attaining objectives and meeting federal and state requirements. The evaluation methodology will employ multiple quantitative and qualitative data sources including questionnaires, interviews, and thorough analysis of student achievement.
- a. Provide technical assistance regarding supplemental educational services to the State.

Performance Measures (A.11.): Annual report including a descriptive study of SES implementation in districts and schools and an evaluation study of SES providers' compliance and effectiveness.

- A.12. The Contractor shall contact the LEA's that have failed to input their data by the timelines provided by the State.
- A.13. The Contractor shall modify questions, when appropriate, to fulfill U.S. Department of Education and State Reporting requirements.
- A.14. The Contractor shall provide and maintain a help desk to provide data-entry support for local educators when appropriate.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on December 1, 2007 and ending on November 31, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. **Compensation Firm.** The payment rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

SERVICE UNIT / MILESTONE	AMOUNT
Performance Report web page (A.3.)	\$298,005/Invoiced over 60 months
Private School Count/Report (A.4.)	\$ 53,091/Invoiced over 60 months
Homeless Education Program (A.5.)	\$ 53,091/Invoiced over 60 months
Transition to Teach Program (A.6.)	\$100,874/Invoiced over 60 months
Education Technology Program (A.7.)	\$167,238/Invoiced over 60 months
Tennessee Charter Schools Program (A.8.)	\$269,156/Invoiced over 60 months
Tennessee Charter Schools Program (A.9.)	\$38,250/Invoiced over 60 months
Supplemental Educational Services (A.10.)	\$520,295/Invoiced over 60 months

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. **Invoice Requirements.** The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Sherry Perry, Education Technician
DEPARTMENT OF EDUCATION
5th Floor Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Telephone # 615-253-5209
FAX # 615-253-5706

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Department of Education – Teaching and Learning/Federal Programs;
 - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced and identify the federal program title fund;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State

shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. Pursuant to *Tennessee Code Annotated*, Section 9-4-604, the State is not to issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage. Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of the Contractor to the State and third parties for any claims, losses, or costs arising out of or related to acts performed by the Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, *Tennessee Code Annotated*, Section 9-8-301, *et seq.*
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.7. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.9. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create a employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services.
- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.14. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified

by written notice.

The State:

Sherry Perry, Education Technician
DEPARTMENT OF EDUCATION
5th Floor Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Sherry.Perry@state.tn.us
Telephone # 615-253-5209
FAX # 615-253-5706

The Contractor:

Cindy Hurst
UNIVERSITY OF MEMPHIS
344 Browning Hall
Memphis, TN 38152
cchurst@memphis.edu
Telephone # 901-678-5063
FAX # 901-678-4257

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.
- E.4. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.5. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.6. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.7. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.9. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.10. FERPA Compliance. The State and Contractor shall comply with the Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) (FERPA) and its accompanying regulations (34 C.F.R. 99). Contractor warrants that it is familiar with requirements of FERPA and its accompanying regulations and that it will comply with all applicable FERPA requirements in the performance of its duties in this contract. Contractor agrees to cooperate with the State as required by FERPA and its regulations in the performance of its duties in this contract. Contractor agrees to maintain the confidentiality of all education records and student information and use such records and information for the exclusive purpose of performing its duties in this contract.

IN WITNESS WHEREOF:

UNIVERSITY OF MEMPHIS:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION:

LANA C. SEIVERS, COMMISSIONER

DATE

APPROVED:

**M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE